

DEC 3 1980

Gentlemen:

Your application for exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code has been considered.

The information submitted discloses that you were incorporated under the [REDACTED] Non-Profit Corporation Act on [REDACTED], for the purpose of creating a cooperative structure dedicated to the advancement of photography as an art. On [REDACTED], you amended your Articles of Incorporation to show that you were incorporated for the purpose of encouraging cooperative and free intercourse among photographers, photographic teachers, photography students, publishers, and other engaged in photographic activities; to provide a registry for photographers; to hold competitions and exhibitions; and to promote the study and improvement of photography as an art.

Your application for exemption states that you provide a cooperative structure for photographers and those interested in photography, to participate in the expansion and advancement of photography as a literary and art form. You provide photographers with a place to exhibit their work and a place to expand their experience, knowledge and interest in photography as a literary and art form. As a gallery, you provide a means for the potential purchaser to examine and contact the photographer.

You also provide an information exchange, equipment information center, and photography classes for the beginner or the professional, and you provide seminars and workshops involving all aspects of photography.

Membership is open to any individual who is interested in promoting photography as an art form. Membership fees are \$[REDACTED] per year, and an individual must be a member in order to exhibit his works. Your photography classes are open to the general public for a fee.

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Exhibition space is sold to members only at a price set by you based on the size of the exhibits. You will provide personal invitations for your members to send to clients, friends, etc. in announcing their exhibits, and you will run their opening, take care of their advertising and provide refreshments for each event. Your members have access to your co-op studio, complete with reflective flats, backdrop (B/W), tripod, 4-head strobe system, flash meter, quartz flood unit and copy stand.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(3) Corporations, \*\*\* fund, or foundation, organized and operated exclusively for religious, charitable, scientific, \*\*\* literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(a)(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

"(a)(2) The term 'exempt purpose or purposes,' as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section."

"(b)(1)(i) An organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its 'articles') as defined in subparagraph (2) of this paragraph:

(a) Limit the purposes of such organization to one or more exempt purposes; and

(b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes."

"(b)(1)(iii) An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3).  
\*\*\* "

"(c)(1) Primary activities. An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

"(c)(2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals."

"(d)(1)(ii) An organization is not organized or operated exclusively for one or more of the purpose specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interest such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest."

"(d)(3)(i) In General. The term 'educational', as used in section 501(c)(3), relates to-

- (a) To instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

Revenue Ruling 66-178, 1966-1 Cumulative Bulletin 138, held that a nonprofit organization created to foster and develop the arts by sponsoring a public art exhibit at which the works of unknown but promising artists are selected by panel of qualified judges for viewing and are gratuitously displayed is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. The organization in this case did not charge the artist any fees for the privilege of having his works displayed; nor were any of the art works offered for sale to the general public.

Revenue Ruling 71-395, 1971-2 Cumulative Bulletin 228, held that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify for exemption under section 501(c)(3) of the Code. In this case, the gallery was formed and operated by a group of artists for the purpose of exhibiting and selling their works.

Revenue Ruling 76-152, 1976-1 Cumulative Bulletin 151, held that a nonprofit organization formed by art patrons to promote community understanding of modern art trends by selecting for exhibit, exhibiting, and selling art works of local artists, retaining a commission on sales less than customary commercial charges and not sufficient to cover the cost of operating the gallery, does not qualify for exemption under section 501(c)(3) of the Code. The organization selects modern art works of local artists for exhibit at its gallery and for possible sale. The gallery is open to the general public.

In the case of Better Business Bureau v. U.S., 326 U.S. 279 (1945) Ct.D. 1650, it was held that the presence of a single noncharitable or non-educational purpose, if substantial in nature, will preclude exemption under section 501(c)(3), regardless of the number or importance of truly charitable or educational purposes.

[REDACTED]

Based on the information presented, we have concluded that you are not organized and operated exclusively for section 501(c)(3) purposes, and you are not entitled to exemption from Federal income tax under the provision of section 501(c)(3). You are not organized for 501(c)(3) purposes since your purposes in Article IV of your Articles of Amendment are considerably broader than those to which an organization described in section 501(c)(3) is restricted. Although some of your activities may be educational, such as your photography classes, seminars, and workshops, you are not operated exclusively for 501(c)(3) purposes since the photographers are being directly benefited by the exhibit and sale of their works, with the result that your major activity is serving the private interest of those photographers who exhibit and sell their work. Since the photographers retain one hundred percent of all sales proceeds, while only paying you a set amount for the exhibits, such direct benefits are substantial by any measure and your provision of them cannot be dismissed as being merely incidental to your other purposes and activities. Therefore, you are required to file Federal income tax returns on Form 1120.

It follows, therefore, that contributions to you are not deductible by donors under section 170 of the Code.

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If we do not hear from you within 30 days, this letter will be our *final* determination in the matter.

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely,

[REDACTED]  
District Director

Enclosures:  
Publication 892  
Form 6018  
Envelope